

Tuesday, 13 August 1946

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INTERNATIONAL MILITARY TRIBUNAL  
FOR THE FAR EAST  
Chambers of the Tribunal  
War Ministry Building  
Tokyo, Japan.

PROCEEDINGS IN CHAMBERS

Paper No. 320 - Application for leave to file the within application dated 29 July 1946.

Paper No. 338 - Application on behalf of the Prosecution under Rule 6(b)(1) pertaining to IPS Document No. 2203.

Paper No. 345 - Application on behalf of the Prosecution under Rule 6(b)(1) pertaining to IPS Documents Nos. 1043 and 1045.

Paper No. 351 - Application for leave to have the evidence in Chief of John Grenville Liebert, a witness for the Prosecution, presented in the form of a prepared statement instead of by oral examination.

Oral motion on behalf of all of the Accused that all proceedings had in Chambers be made a part of the record in this case and that a separate volume be kept. Taken under consideration on 5 August 1946.

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Before:

HON. SIR WILLIAM WEBB,  
President of the Tribunal and  
Member from the Commonwealth of  
Australia.

Reported by:

Fred T. Abram  
Official Court Reporter  
IMTFE

Appearances:

For the Prosecution Section:

R. H. QUILLIAM, Brigadier, Associate  
Counsel, acting on behalf of New  
Zealand; and  
MAJOR JOHN F. HUMMEL  
SOLIS HORVITZ  
HENRY A. HAUXHURST  
WILLIAM C. PROUT  
CAPTAIN ARTHUR A. SANDUSKY  
FRANK S. TAVENNER, JR.  
EDWARD E. O'NEILL.

For the Defense Section:

DR. UZAWA, Somei,  
Chief Japanese Counsel; and  
MR. WILLIAM LOGAN, Jr., Counsel for  
the Accused KIDO, Koichi.  
MR. MICHAEL LEVIN, Counsel for the  
Accused SUZUKI, Teiichi.  
MR. OKAMOTO, Toshio, Counsel for the  
Accused MINAMI, Jiro.

For the Office of the General Secretary, IMTFE:

MR. G. WALTER BOYMAN,  
Clerk of the Court.  
MR. C. A. MANTZ,  
Deputy Clerk of the  
Court.

The proceedings were begun at 1600.

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THE PRESIDENT: Well, the defense has had a chance of inspecting these in every case, is that so?

MR. LOGAN: All the documents have not been filed, your Honor. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 have not been filed. Perhaps if I stated my objection to each one as I go through them --

THE PRESIDENT: Yes, that is alright.

MR. LOGAN: The first one is alright.

THE PRESIDENT: What about the second one?

MR. LOGAN: Second one is alright. Third one is alright; fourth one is alright. The fifth one, we would like to have the complete speech instead of two and a half pages. KIDO is one of the accused and we would like to have the complete speech instead of two and a half pages out of fifteen pages.

THE PRESIDENT: Yes. Who is appearing for the prosecution.

MR. LOGAN: Mr. Hauxhurst will be here in a moment, your Honor.

BRIGADIER QUILLIAM: Mr. Hauxhurst is here now.

MR. LOGAN: Item No. 6 is a complete chapter, which is alright.

THE PRESIDENT: Item No. 5 -- what were we on?

MR. LOGAN: I just finished item 5, requested the complete speech.

THE PRESIDENT: Fifteen pages. They are offering you two and a half?

MR. LOGAN: Yes.

THE PRESIDENT: What does the prosecution say?

MR. HAUXHURST: It contains fifteen pages, of which we have taken twelve. Certificate was made to the Japanese translation, certifying that the document attached is a true and exact copy of KIDO's address before the House of Representatives. It contains fifteen pages and this is a two and a half page quotation from it.

THE PRESIDENT: Have you any objection to giving the whole speech?

MR. HAUXHURST: Oh, no.

THE PRESIDENT: Better get the whole fifteen pages.

MR. LOGAN: With respect to 6, document 201 has not been filed, but I understand they are

getting out a complete chapter, so that will be alright.

Item number -- we would like to have the balance of that particular portion instead of just three pages. We would like to have the five pages of that one particular item in item No. 7.

MR. HAUXHURST: The item is fully copied in English and the one of three pages in Japanese. On that particular question, I had decided not to introduce that, so that will not be introduced.

MR. LOGAN: With respect to items 8, 9, 10, 11 and 12, also 13, none of those documents are filed and I have been unable to see them.

MR. HAUXHURST: If the President please, I would like to explain that it gives a short explanation at the top of the page. It was a series of articles beginning July 1, 1937, and ran to 24 of July, 1939, when they began to call them volumes; called them volumes for that particular year from July to June, inclusive, so we have thirty-eight of these magazines which were published under the direction and supervision of the Japanese Government. Now, then, the reason that I asked that was to -- if we use document 1503, which contained the volumes July to December, inclusive,



of 1937, it was necessary to introduce all of them, because I find that some of the members of the prosecution are using December, while somebody is using August, and it seemed to me if these were complete magazines in themselves -- this one for November, 1937, and if you picked out an article out of here -- "Conference on the Nine Power Treaty" -- and if you wanted to take excerpts from that you would have to comply with this rule, but if you used the whole article, which is -- starts out, for instance -- in this particular case I am not using it -- but here is a statement of the Japanese Government on Japan's non-participation in the Conference of the Nine Power Treaty signatories. That article covers several parts, parts one to three, which is a statement issued by the Japanese Government. Now, if we use the whole article and introduce it, if it were in English and Japanese, I had the feeling at least that I had complied with the rule, but if I am ordered, out of an article of seven or nine pages, only to quote one or two paragraphs, it would be less than a page or a page and a half, it seemed as though it came within the rule so far as excerpts were concerned, but as far as the whole article was con-

concerned, it would be unnecessary, because this happens to be 1937, November, 1937 --

MR. LEVIN: The whole magazine?

MR. HAUXHURST: The magazine will be lodged in Court with the English and the Japanese translation of the whole article.

MR. LOGAN: There is no objection by the defense. With respect to 15, I would like to have the whole article.

MR. HAUXHURST: The three documents we took excerpts out of, the Tokyo Gazette, has been on deposit since a week ago Monday. If you want the whole article I would expect to give you in Japanese and English the whole article to aid you in doing that. After I learned that rule I have been requiring the full articles.

MR. LOGAN: Is that with respect to 15?

MR. HAUXHURST: Yes, sir.

MR. LOGAN: With respect to item 16, my Japanese colleagues have requested that whole article. It is a document --

THE PRESIDENT: Fourteen pages, from which you want? --

MR. LOGAN: It is a document which is written in Japanese. I believe that page 5 refers

to a decision of one of the five ministers. We would like to have the entire document with respect to what all of them said.

MR. HAUXHURST: In connection with that, Mr. President, suppose we have a document that has a hundred pages and we only want to have one page from that. It seems to me if the page we quote is complete in itself and covers a specific question that the defense counsel have no right to require the English and Japanese of a hundred page book. I would rather throw the document out than be in a position of promising we would do that, because it is physically impossible to do it.

MR. LEVIN: This argument refers only to a document of fourteen pages, as we understand it, and it is a rather important document. When we have a document that is a hundred pages I think we can decide whether or not there is material there that will be very persuasive and we ought to have. We might ask the Court to permit it and you might suggest it be not permitted.

MR. HAUXHURST: Mr. President, if those books -- documents -- are on deposit for seven days they ought to determine such parts as they feel are pertinent to this particular page that



we are putting in, and if your Honor should decide then that it should come in, I think the prosecution would be willing to agree to do it, but it seems to me it has to be shown to be pertinent and they can't just ask fourteen pages --

MR. T. OKAMOTO: An excerpt of only one part, you upset the balance and the harmony of the whole situation, and we Japanese attorneys would like to have the whole document copied out and delivered to us.

MR. LEVIN: Mr. President, might I just say generally that the President has done all that he could do for us, so far as the deposit of documents is concerned; nevertheless, the way we are situated, it is almost impossible for us to read the document, because we are in court all day long and we have no one to send out to make a review. Today, for instance, Mr. Logan left the court room and had to examine this paper and to examine the various documents, so in relation to documents that are not too long, it would be a great aid to us if the Court will give us the entire document. I would not request a very long document. As Mr. Hauxhurst suggested, if there was one page and there were a hundred there that did

not relate to the matter we wouldn't ask for it.

MR. LOGAN: This document is in Japanese. In all probability the prosecution has translated the entire amount of it. It is one complete conference, with opinions of various men and a summary of it.

THE PRESIDENT: One man's opinion is being formed with a consideration to what another man said, is that what you have in mind?

MR. LOGAN: Well, it might be so construed. You see, it is a complete conference.

MR. HAUXHURST: We will have to determine, for instance, if a document of that size, in order to be read for our trial, whether or not it is worth going to the effort to do it. Three paragraphs which are complete in themselves cover that particular phase.

THE PRESIDENT: At a conference what one man says is very often determined by what he said before, and I think it is like a speech. They should have the whole of it, and I am not influenced by the fact that it is only fourteen pages.

MR. LOGAN: With respect to 17, your Honor, there is no objection. With respect to 18, we would like to have the balance of that one item which

they are copying. I believe it consists of about one or two paragraphs. That is item 81.

MR. HAUXHURST: They want all of 81?

THE PRESIDENT: They want only one or two paragraphs.

MR. LOGAN: And the same thing is true with respect --

MR. HAUXHURST: Mr. Logan, I understand that now. 81 is alright.

MR. LOGAN: Same thing is true with respect to 19. We would like excerpt No. 5.

THE PRESIDENT: That is agreed to. Twenty?

MR. LOGAN: Twenty, I have no objection to. 21 and 22 are interrogations. They speak for themselves. 23, No objection to. 24, 25, 26; none of these documents are filed.

MR. HAUXHURST: I brought that document down. That is the information relating to exports and imports. The first page is the English and the second page is the Japanese. This shows the exports and imports in quantities and value from 1931 to 1945, certified by the Commerce and Industry Department. The Japanese that put this up for us did an excellent job. Now, there is the English and here is the Japanese (indicating) and here is

the English and here is the Japanese, three pages of that, showing the exports and the next page is the imports. We have seven or eight other charts regarding Malay, Indo-China, Burma, The Netherlands, but I am only interested in China and Manchukuo. It seems to me as though that document should be divided into "A", "B", "C", "D". That book is that thick (indicating), and nobody has indicated to me yet that anybody in our section would be interested in it, although there have been many people working on it. But I was interested in showing to the Court not only the quantities, to show the tonnage of coal, the tonnage of iron ore shipped back and forth between Japan and Manchukuo, Kwantung Peninsula, and China.

MR. LOGAN: We have no objection.  
27 no objection. I assume 28 -- that document is not filed either. Does that run under the same idea as 24, 25 and 26?

MR. HAUXHURST: That document is complete in itself, in that --

MR. LOGAN: All right, counsel, upon your statement we will accept it.

Item 29 no objection. 30, Japanese colleagues would insist on the whole.

THE PRESIDENT: What is it about? Is it a conference?

MR. LOGAN: That book is written in Japanese. I don't know, your Honor.

MR. T. OKAMOTO: This document is also a summary of report of investigation of Japan and Manchukuo, therefore if an excerpt is submitted it won't tell you exactly what the whole idea is.

MR. HAUXHURST: I am not familiar with this document. I have been through it, through the South Manchurian Railway reports, where it has been quoted quite frequently. I found a statement of the economic program for 1933. I was only going to quote two pages from it, which was a summary of the purposes of the plan, and I didn't go into the details of the agriculture and other things, because that law and that plan has been substituted by the Five-Year Plan, which I am advised we are expecting to put in in complete English and Japanese. This was a plan that set up the economic structure of Manchukuo and they put in a two-page statement of the purposes of it and then it went into discussion of the details. I had the feeling that the Court's time should not be burdened with something that was not entirely effective, and the



only purpose I was going to put it in was to show that Japan in its handling of Manchukuo as early as 1933 was laying out an economic plan for the control of all of its industries and resources.

THE PRESIDENT: You say it is a fair summary of the whole?

MR. HAUXHURST: Yes, sir, it is a short summary. Where is that summary?

THE PRESIDENT: I couldn't tell. It is in Japanese.

MR. HAUXHURST: This also came from a SCAP Directive too.

THE PRESIDENT: I can't form any judgment on it unless it is in English. For the time being it will be sufficient. Japanese counsel can bring it up again if it is vital to them.

MR. HAUXHURST: Concerning the setting up of puppet governments in North Mongolia and Northern China and Central China, a book consisting of 127 pages, out of which we have taken two pages.

MR. LOGAN: There is no objection to that.

THE PRESIDENT: Is there only one document here?

MR. LOGAN: That was 338 we just took.

THE PRESIDENT: Order prayed for 338,

because there is no objection. Now we are on 345.

MR. LOGAN: There is no objection to 345.

THE PRESIDENT: Order is prayed. 351.

BRIGADIER QUILLIAM: Yes, I pray for that application, an affidavit by Mr. O'Neill, which sets forth the circumstances in connection with the application.

THE PRESIDENT: You want to examine him on affidavit, although he speaks English and he is an American?

BRIGADIER QUILLIAM: Oh, yes.

THE PRESIDENT: American, European born.

BRIGADIER QUILLIAM: There is no objection about that at all. The basis of the application is that it is a very lengthy and complicated report of a special investigator, covers all kinds of technical matters, tables of figures --

THE PRESIDENT: Ordinarily he would produce tables of figures; if he were examined orally he would produce tables of figures.

BRIGADIER QUILLIAM: That can't always be done, sir, because there figures come into the general trend of his evidence in such a way that they can be brought in then as part of the record so as to make the evidence intelligible. We have

been trying to make an estimate as to the saving of time that would be effected. It is estimated that it would take a day and a half if he can read a prepared statement, and from the best consideration we can give to the matter -- it is a matter that is very difficult -- we estimate it may take anything up to ten or twelve days instead of a day and a half --

THE PRESIDENT: You just call him and say, "You made a report in this matter. Is this your report?"

BRIGADIER QUILLIAM: I see.

THE PRESIDENT: You can't expect any man to carry all those figures in his head.

BRIGADIER QUILLIAM: There is another point we are concerned about. There is a great possibility of confusion and error in the translation of matters of this kind. Not only will it take longer, but there is a great possibility of error in the translation of technical terms, and we think it will be much better comprehended by both the Tribunal and the defense if it is read as a continuous report.

THE PRESIDENT: Oh, I am quite sure it would be. It is only a matter of form, really, to

call him as a witness to be examined in chief orally and to produce his report in the course thereof. It would be better to observe the form, I think.

MR. LEVIN: Mr. President, I was going to say this, that naturally we would have no objection to tables of statistics and figures that he has compiled. Nevertheless, as it is contemplated here, to use this witness' statement, his affidavit, just as the Court has used affidavits of those who don't speak English, his complete testimony, including all of this statistical data will be by a prepared statement and then he will be submitted for cross-examination.

BRIGADIER QUILLIAM: That is the intention, yes.

MR. LOGAN: We think very strongly on the matter of permitting one who speaks English very well -- I understand Mr. Liebert is an American lawyer --

THE PRESIDENT: He is personally known to me.

MR. LOGAN: He is personally known to me. He is a man who speaks most fluently and freely. I would have no objection in preparing that portion of his testimony that relates to his studies and to

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statistics, or to data which he has prepared. In other words, we believe that he could testify on question and answer very well. I don't think the matter of -- the prosecution continuously proposes the matter of saving time. Naturally, we are as anxious to save time as they are, and yet when one can prepare a statement of his evidence under the guidance of either party, it isn't his evidence; he is not subjected to the scrutiny of question and answer. I have the highest regard for Mr. Liebert, but I think when the Court has provided the rule in relation to persons who cannot speak English, it should not extend to those who understand it and speak it very well. Let him testify as to what he knows and what his studies indicate and facilitate his testimony with all data that he may have. For instance, a number of witnesses have refreshed their recollection from memoranda. We will have no objection to that. I think there should be no further waiver. We feel this matter keenly and we all agree on that.

MR. O'NEILL: May I be heard, your Honor?

THE PRESIDENT: Yes.

MR. O'NEILL: In the first place, the testimony differentiates from the ordinary

testimony of the other witnesses, in the sense that he has not testified as to facts as to what he saw occur; he is testifying as an expert witness. His testimony, therefore, will be practically 80 to 90 per cent of conclusions, resulting from his study of these tables, so that the points stressed by the defense that the matter could be couched in the language of the prosecution, as it would be if Mr. Liebert was testifying as to an actual fact of the situation, I don't believe would hold. That is one of the main reasons why we have asked permission to do this. It is our intention that this testimony of Mr. Liebert, after being qualified, that he will be asked general questions -- did he make a study of the economic and financial preparations of Japan for war, to which he will reply in the affirmative, and he will then be asked what was the result of this study, which will be this prepared statement in one complete answer. It can be simultaneously translated in Japanese as he gives it in English. It will obviate the necessity of counsel asking him numerous questions on specific points. Also, his testimony will be submitted to defense counsel 24 hours prior to Mr. Liebert's taking the stand. It seems to me it would be advantageous to defense

testimony of the other witnesses, in the sense that he has not testified as to facts as to what he saw occur; he is testifying as an expert witness. His testimony, therefore, will be practically 80 to 90 per cent of conclusions, resulting from his study of these tables, so that the points stressed by the defense that the matter could be couched in the language of the prosecution, as it would be if Mr. Liebert was testifying as to an actual fact of the situation, I don't believe would hold. That is one of the main reasons why we have asked permission to do this. It is our intention that this testimony of Mr. Liebert, after being qualified, that he will be asked general questions -- did he make a study of the economic and financial preparations of Japan for war, to which he will reply in the affirmative, and he will then be asked what was the result of this study, which will be this prepared statement in one complete answer. It can be simultaneously translated in Japanese as he gives it in English. It will obviate the necessity of counsel asking him numerous questions on specific points. Also, his testimony will be submitted to defense counsel 24 hours prior to Mr. Liebert's taking the stand. It seems to me it would be advantageous to defense

counsel to conduct a more advantageous cross-examination, because they will have opportunity to study the testimony he is going to give; the facts and figures he is going to testify to. They will not have to take him "from the hip" in open court and try to cross-examine him on that point, and it will be a great saving of time and it will eliminate considerable difficulty in the translation department.

MR. LOGAN: In view of what Mr. O'Neill has said, I think is all the more reason why he should be produced. It certainly is a more fertile ground for cross-examination as far as the defense is concerned than to try and probe it to see if he has arrived at the right conclusions.

MR. O'NEILL: As a matter of fact, your Honor, this is a procedure that in an American court would be most advantageous to any defense counsel, and I am at a loss to understand why the defense objects. We are offering to cooperate with and we are offering to the defense 24 or 48 hours in advance of the time he takes the stand the exact wordage of what he is going to testify to, and cross him up if possible, which, in the American procedure they would hear for the first

time in open court, as to what the expert testimony would be.

MR. LOGAN: It would be in question and answer form though.

MR. LEVIN: Mr. President, I think all of us have seen experts on the stand who are questioned by question and answer and then who testify in relation to scientific matters -- doctors, engineers, architects, and others, and after their preliminary questions they proceed to testify, and while they might use a statistical table or data, they are capable and they do give their evidence by question and answer. It would be no advantage to us to get a prepared statement of any one witness who is not submitted to the scrutiny of question and answer. We regard the examination of a witness by question -- by direct question -- as extremely important, in that he has to think up his answer at the time he is testifying; he hasn't an opportunity to make up his mind in the privacy of his own office, or wherever he is making it; he is making the direct answer in open court in the presence of the Court. This is a very important part, questioning a witness in open court and we regard that as a very plausible one. We are, of course, speaking entirely without



regard to particular individuals, whom some of us know. We are not questioning his integrity in any respect.

BRIGADIER QUILLIAM: I understood the gentleman who just spoke to have pointed out earlier that the witness, as an expert who conducted an investigation, would have the right to refer to notes, but this witness is not in the position of say a medical witness who is advancing some purpose and trying to substantiate it. He doesn't depend on the introduction of figures. No man would have the memory to do it without references; he must necessarily refer to notes. In effect, he would be reading from his notes, taking ten times as long to do it as he would if he wrote it. There is nothing sinister by this application at all. There can be a saving of time. The witness is not speaking of disputed facts --

MR. LOGAN: The mere wording of that indicates it is absolutely imperative that we have cross-examination of this witness in open court. We have a right to find out what he investigated.

MR. LEVIN: Mr. Logan meant direct examination.

MR. LOGAN: Direct examination.

MR. LEVIN: I spoke of using notes only to refresh his memory. I didn't speak of using notes to simply read them off instead of a statement. That, of course, would be a subterfuge. When one is testifying from memory but has notes or memoranda in relation to events, it can't be expected covering technical matters he would have all those in mind. On matters covering a period of many years, on a diary, naturally a man has a right to go to a diary to refresh his recollection.

BRIGADIER QUILLIAM: He has, for example, examined the petroleum industry, so far as it affected the war. It is necessary for him to give evidence about the legislation and ordinances that were passed and other measures that were taken, and he couldn't possibly carry that in his head.

THE PRESIDENT: Mr. Keenan, or whoever examined him, would have his report and he would ask him questions in the order of the report for every industry. He would refresh his memory from these notes. The defense would not be protected by making him do it that way. We could hardly say, "You must recollect that fact without looking at the report." I won't decide this question myself. I will discuss it with my colleagues,

because I knew they are reluctant to extend that rule to people who are likewise born in America or Britain, who speak English well. I will consult them about it. I am glad to have had this full debate. I will put it all before them. When do you want to use this affidavit?

BRIGADIER QUILLIAM: It is desired we should have a decision as soon as possible. When it has to be done post haste, if we have to go through translating and producing it is going to take us about three weeks. That is about the time we have.

THE PRESIDENT: I will get this typed up immediately and put the matter before my colleagues. I wouldn't give a decision without consulting them.

BRIGADIER QUILLIAM: It is going to mean 150 pages. We will have to be ready. In addition there are some tables and charts. Mr. Liebert is at present engaged in doing his best. I don't want to be tied to particular time.

THE PRESIDENT: I will refer the matter to my colleagues.

MR. LOGAN: Is it not possible to know whether the hearings be made part of the record? Some of my colleagues are objecting to any further hearings in chambers unless a decision is made.

The prosecution offered no objection to it.

THE PRESIDENT: We have to construe the Charter. Whatever the Charter is we have to give effect to it. We want to make sure we don't do something the Charter prohibits.

(Whereupon, at 1650, the proceedings were concluded.)

--O--